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necessary to inform the court and the petitioner of the adjustments in controversy and the position of the respondent thereon.

(3) In answering petitions, Counsel personnel generally must rely on the information contained in the administrative file. In certain cases, however, an answer can be filed without the administrative file if there is sufficient information to answer the case (e.g., information is secured from the notice or from the petitioner). When an answer is filed in such a case, the file should document the steps taken to secure the administrative file and the source of the information.

(4) Further, a case may be answered without the administrative file if the attorney and manager have determined that affirmative allegations in the answer are not required or a review of the petition and other information in Counsel's possession indicate that there are no issues raised in the petition that requires a review of the administrative file in order to properly answer the case. The answer should be amended once the administrative file is received if necessary or appropriate under the circumstances. When it is determined that review of the administrative file is necessary in order to properly answer the case, a Motion to Extend the Time In Which to Answer should be filed. See CCDM 35.2.2.2.8(3)-(5).

(5) T.C. Rule 33(b) imposes upon counsel (as well as pro se petitioners) the duty to make reasonable inquiry as to both the facts and the law prior to the filing of any pleading. The signature of counsel constitutes a certification that counsel has read the pleading and, that after reasonable inquiry, has determined that it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law. If the court determines that a pleading has been filed in violation of this rule, sanctions may be imposed. See CCDM 35.10.3.2.

(6) Fed. R. Civ. P. 11, upon which T.C. Rule 33(b) is based, expands the inherent powers of United States District Courts to award expenses, including reasonable attorney's fees, to a litigant whose opponent acts in bad faith in instituting and conducting litigation. This rule stresses the need for some prefiling inquiry into both the facts and law to satisfy the affirmative duty imposed by the rule. The objective standard is reasonableness under the circumstances, which is a more stringent standard than one of good faith. Fed. R. Civ. P. 11, Advisory Committee's Note.

(7) It is clear that T.C. Rule 33(b) imposes an affirmative duty upon counsel to investigate the facts of the case and the relevant law prior to filing an answer or other pleading. A good faith belief that the case is well grounded in fact and law is not sufficient. Reasonable inquiry is a more stringent standard than good faith. What constitutes a reasonable inquiry may depend on such factors as how much time for investigation was available to the signer of the answer or motion; whether the signer had to rely on a client for information as to the facts underlying the pleading, motion, or other paper; whether the pleading, motion, or other paper was based on a plausible view of the law; or whether the signer depended on forwarding counsel or another member of the bar.

(8) As stated above, one of the factors the court will consider in determining whether the reasonable inquiry standard has been met is whether the attorney had to rely upon a client for information. The reasonable inquiry standard should be met in the first instance by the periodic attempts to obtain the administrative file. These periodic attempts to obtain the administrative file are necessary even in those offices where automatic or continuing requests for an administrative file are in place.

(9) Tax Court Rule 173(b) as amended now requires answers to be filed in all "S" cases. The amendment is effective for all petitions filed after March 13, 2007. This change will assist petitioners and low-income taxpayer clinics in contacting the Field attorney assigned to the case and result in the earlier consideration of small tax cases. The principles and procedures described elsewhere in this section are equally applicable to the answers filed in small tax cases. Pursuant to Rule 173(c), no reply to an answer shall be filed unless otherwise directed by the court and any affirmative allegations contained therein shall be deemed denied. Should it be determined that a reply is necessary, a Motion to Require Petitioner to File Reply should be filed. The case is considered at issue upon the filing of the answer pursuant to Rule 38 unless a reply is directed to be filed by the court.

(10) Upon receipt, each new small tax case petition should be reviewed to determine whether the small tax case election is allowable or otherwise appropriate, such as cases with potential precedential value or those presenting novel issues resulting from changes in the tax law. This consideration should also continue during the preparation of the case for trial or other disposition, to reduce the instances of dilatory procedural and jurisdictional motions that are sometimes filed in these cases.

#### **35.2.2.1.5 Answers in "S" Cases**

Deleted.

#### **35.2.2.2.8 Affirmative Allegations**

(1) The answer must contain affirmative allegations of any facts upon which the respondent relies for defense or for affirmative relief or to sustain any issue with respect to which the burden of proof is on the respondent. These allegations should follow immediately after the general denial paragraph and be numbered consecutively beginning with the number following that given to the general denial paragraph. The first paragraph of each statement of facts with respect to which respondent is required to plead affirmatively should be a short introductory paragraph to inform the court and the petitioner of the nature of the respondent's defense or the form of relief requested or with respect to the issue of fraud or transferee liability, etc., which should be covered in the allegations to follow. Each further defense and the allegations with respect to each issue upon which the respondent has the burden of proof will be separately and consecutively numbered with the detailed allegations of supporting facts. See Exhibits 35.11.1–12 through 35.11.1–16.

(2) It is generally advisable to avoid getting into the second and third alphabet in the lettering of subparagraphs of affirmative allegations. This may be avoided in a number of different ways. For example, if there are a number of years involved with respect to which allegations are made in support of the fraud penalty, the first of the lettered subparagraphs may allege facts which are applicable to all or most of the years involved, followed by lettered paragraphs containing separate allegations which pertain to the years individually.

(3) If a case requires affirmative allegations by respondent or a review of the petition and other information indicates that a review of the administrative file is necessary to properly answer the case and the administrative file cannot be secured in time to answer, a Motion to Extend the Time In Which to Answer should be filed. The motion should explain the circumstances as to why the motion is necessary, ask for ample time to a date certain in which to file an answer, and should contain a statement pursuant to T.C. Rule 50(a) as to whether petitioners object to the granting of the motion.

(4) Attempts to plead affirmative allegations and making uninformed responses without the benefit of the administrative file may result in sanctions under T.C. Rule 33(b), and may also raise pleading and proof problems. Affirmative allegations, for example, that are made without the benefit of the administrative file tend to be very general in nature and invite petitioners' motion for judgment on the pleadings. These motions for judgment on the pleadings may be scheduled for hearing fairly quickly. The administrative file will be needed to respond to the motion.

(5) In instances in which affirmative allegations are called for but the administrative file cannot be located after a reasonable number of requests, the attorney should inform the appropriate management officials in order to determine how next to proceed.

#### **35.4.9.2.1 Pretrial Memoranda/Statements of Facts and Issues**

(1) Pretrial memoranda are generally required by the terms of the court's pretrial order for all cases when no basis of settlement has been reached as of the date of the report. The purpose of the pretrial memorandum is to provide the court with information about the status of the case, the relative development of the facts and stipulation of facts, the prospective witnesses, issues in dispute and evidentiary questions that may arise. The pretrial memorandum is one of the first opportunities for trial advocacy in connection with a Tax Court case and care must be taken to ensure the pretrial memorandum is complete, accurate, fair and effective. In all cases, the administrative file should be carefully reviewed in connection with preparing the pretrial memorandum. The court may limit the case to those issues and witnesses identified in the pretrial memorandum. The form and content of the pretrial memorandum is specified in the standing pretrial order or other orders directly on point and should be followed. See an example of a pretrial memorandum at Exhibit 35.11.1-139. Use the Chief Counsel macros to generate a pretrial memorandum in proper form.

(2) Pretrial memoranda may be directly submitted to the Tax Court except for abatement of interest, collection due process answered cases involving novel or significant issues or when the burden of proof or a *Shea* issue (relating to a section 66(b) determination regarding community property laws) is raised in the petition. See Exhibit 35.11.1 -1 (Tax Court Documents Requiring Associate Office Review) for those issues requiring coordination. In addition, National Office review is required prior to filing when the pretrial memorandum seeks to distinguish a position set forth in published guidance.

(3) The Standing Pre-Trial Notice for Small Tax Cases now requires pretrial memoranda to be filed in all small tax cases proceeding to trial, providing the court and the parties with timely and accurate case status information and a concise description of the issues and witnesses to be presented at trial, enhancing the efficient disposition of the cases.

/s/  
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